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November 15, 2023

Hon. Lewis J. Liman, U.S.D.J.
Southern District of New York
United States Courthouse
500 Pearl Street
New York, NY 10007

Via ECF

**Re: 689 Eatery Corp., etc. et ano. v. City of New York, et al.,
Docket No. 02 CV 4431 (LJL) (“Action No. 1”)**

**59 Murray Enterprises, Inc. etc., et ano. v. City of New York, et al.,
Docket No. 02 CV 4432 (LJL) (“Action No. 2”)**

**Club at 60th Street, et al. v. City of New York
Docket No. 02 CV 8333 (LJL) (“Action No. 3”)**

**336 LLC, etc, et al. v. City of New York
Docket No. 18 CV 3732 (LJL) (“Action No. 4”)**

Dear Judge Liman:

We represent the plaintiffs in Action No. 2, and on behalf of all plaintiffs’ counsel herewith submit the requested proposed outline of issues to be argued on November 28 and 29, 2013, and designation of lead arguing counsel on each issue.

We propose that argument of Claim One (Mandatory Termination) begin at 9:30am on November 28, for up to three hours; followed by argument of Claim Two (Permitting), as soon as the Claim One argument is concluded, for up to two and one-half hours. Counsel anticipate that there will likely be at least one hour left on Day One following argument on Claims One and Two.

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Argument on Claim Three issues (the definitional change adopted in 2001), would follow as soon as the argument on Claim Two is concluded, for up to three hours. Argument on Claim Four issues (Bookstores) would follow as soon as the argument on Claim Three is concluded, for up to one hour. Those issues not reached on November 28 would be argued on November 29, beginning at 2pm.

CLAIM ONE: MANDATORY TERMINATION (3 hours)

Mr. Garrou will present Plaintiffs' primary opening presentation on the mandatory termination point. When he finishes, other Plaintiffs' counsel will briefly add any additional thoughts on that point.

Mr. Muschenheim will then present the City's response on that point.

Then Mr. Garrou will present Plaintiffs' primary reply on that point.

CLAIM TWO: THE PERMITTING ISSUES (2.5 hours)

Mr. Garrou will present Plaintiffs' primary opening presentation on the permitting points. When he finishes, other Plaintiffs' counsel will briefly add any additional thoughts on that point.

Ms. Devine will then present the City's response on that point.

Then Mr. Garrou will present Plaintiffs' primary reply on that point.

CLAIM THREE: THE CHALLENGE TO THE 2001 AMENDMENT'S DEFINITIONAL CHANGE CLASSIFYING 60/40 BUSINESSES AS ADULT BUSINESSES (3 hours)

This claim involves several distinct issues, including:

- (1) how speech will fare if the 2001 definitional changes are allowed to take effect (Mr. Mooney will present Plaintiffs' primary argument followed by any additional comments by other Plaintiffs' counsel)
- (2) whether the impact in Manhattan should be separately considered (Ms. Dubno will present Plaintiffs' primary argument followed by any additional comments by other Plaintiffs' counsel)
- (3) whether under Justice Kennedy's test, commercial viability of relocation sites becomes relevant and, if so, what is the evidence on that point (Mr. Rudofsky will present Plaintiffs' primary argument followed by any additional comments by other Plaintiffs' counsel));
- (4) what is the secondary effects justification for the definitional change and may current evidence of those effects be considered (Mr. Rudofsky will present

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Plaintiffs' primary argument followed by any additional comments by other Plaintiffs' counsel); and

- (5) has the City met its burden in showing that the definitional changes provide adequate alternative sites entirely apart from whether one considers commercial viability or whether Manhattan may be separately considered? (Mr. Nye will present Plaintiffs' primary argument followed by any additional comments by other Plaintiffs' counsel).

Following all the Plaintiffs' arguments on Claim Three, the City will then present its responses. Responsive presentations from the City will be by the following:

Issue 1 (how speech will fare): Mr. Muschenheim

Issue 2 (Manhattan): Mr. Muschenheim

Issue 3 (commercial viability): Mr. Muschenheim

Issue 4 (justification/secondary effects) Ms. Riggs:

Issue 5 (alternative sites): Mr. Muschenheim

Following the City's Response presentations, all Plaintiffs' counsel will be given the opportunity to reply, with Plaintiffs' lead counsel on each point going first.

CLAIM FOUR: THE BOOKSTORE ISSUES (1 hour)

Ms. Dubno will present the Bookstore Plaintiffs' primary opening presentation on bookstore-specific points.

Then Ms. Devine will present the City's response on that point.

Then Ms. Dubno will present the Bookstore Plaintiffs' primary reply on that point.

Respectfully,

Edward S. Rudofsky

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Cc: All Counsel (Via E-Filing)